The second ground of appeal also cannot prevail. Section 179 of the Criminal Procedure Code covers the situation. Here the accused are charged with separate offences committed in the same transaction and may therefore be charged and tried together. There is no ground for thinking that any of the accused was prejudiced in any way by the joinder of these two charges.

There is no substance in the 3rd ground of appeal. It is quite clear from the evidence given by the prosecution what the particulars were each of the accused had to meet.

The 4th ground too must fail in that it was clear from the wording of the original charge that the complaint was one of causing hurt to the men Sinniah and Muthu. It must be conceded that the word "assault" in the original charge must be read under the provisions of section 155 Criminal Procedure Code as having the technical meaning given to it in section 352 Penal Code, but it is also beyond doubt that the evidence disclosed that such an offence must have preceded the actual causing of hurt, and I am also satisfied that at the time of the original charge the word "assault" was understood by the accused in its colloquial sense of causing hurt.

The appeal on the grounds set out must therefore fail.

I am, however, of opinion that on the facts proved by the prosecution evidence a case for voluntarily causing hurt against each of the accused has not been made out. The evidence against each of the accused is not particularised in regard to blows being struck by each of them on the persons of Sinniah and Muthu, but the evidence asserts that all the accused as a body caused hurt to Sinniah and Muthu.

On appeal the whole case and the decisions of the lower Court on all points arising in the case are thrown open for re-examination and amendment if necessary by the Appellate Court.

On the evidence given it is quite clear that all accused formed part of a body of men who assembled at the house of Sinniah and Muthu about 8.30 p.m. and that either prior to that time or after they had so assembled some of that body, over 5 in number, conceived the common intention of using force against Sinniah and Muthu and that to that end they committed mischief and criminal trespass by entering the house in which they were living. This body of men of whom the accused were members then became an unlawful assembly. There is also clear and satisfactory evidence that certain members of this assembly used force or violence.

On that evidence a charge of rioting is clearly established and the learned Magistrate misdirected himself in holding that there was no evidence to support such a charge and in amending it.

The defence of each of the accused was a bare denial which could be given no weight against the prosecution evidence.

It is clear from *Jabanulla's*[1] *case* and subsequent rulings that it is open to an appeal Court to reverse a finding which amounts to acquittal and substitute therefor a finding of conviction if the facts so warrant and the acquittal was based on wrong grounds.

I am of opinion that the proper finding in this case is that each of the accused was guilty of rioting. I therefore dismiss the appeal, but alter the finding to one of guilty of rioting against each of the accused.

As to the sentence I am of the opinion that the riot was not of a serious nature and that the sentence of the lower Court is adequate.

The appeal will be dismissed, but the finding will be altered to one of guilty of rioting under section 147 of the Penal Code and the sentence will be maintained.

Appeal dismissed; Finding altered.

SUNGEI SALAK RUBBER CO. LTD. v. DEPUTY COMMISSIONER OF LABOUR, NEGRI SEMBILAN & MALACCA.

[A. C. J. (Callow J.) July 21, 1948]

[Seremban — Civil Appeal No. 4 of 1948]

Workmen's Compensation Enactment, (Cap. 155), ss. 20(i), 23(iii) and 25(i)(f) — Workmen's Compensation Rules, 1933, rr. 19, 42 — Representation by the Controller of Labour and non-compliance with r. 42 — Death in the course of employment — When a man's employment begins — Civil Procedure Code (Cap. 7), ss. 34, 417 — Public highway.

This was an appeal against the decision of the Commissioner for Workmen's Compensation, Negri Sembilan, on the grounds that the learned Commissioner erred in law in holding (1) that the Deputy Commissioner had power to initiate the proceedings in default of his appointment as next friend of the minor dependents pursuant to r. 42 of the Workmen's Compensation Rules, (2) that the death of the deceased was caused by injury arising out of and in the course of his employment as a workman, (3) that the journey which the deceased, who was under no obligation to attend at the New Labu Estate Factory on the 11th December 1947, was at the time of accident travelling on his Master's business.

Held: (1) even if the omission to obtain the appointment in accordance with r. 42 was held to be a defect or irregularity it did not affect the merits of the case; (2) the deceased was on his way to his place of work for the purpose of working and would not have been at the place where he met his death had it not been for his status as an employee, and his death therefore

arose out of and was incidental to the employment; (3) for all practical purposes the lane on which the accident occurred was on estate road running as it does through the employers' plantation.

Cases referred to:—

(1) *Alkaff & Co. v. The Assistant Controller of Labour* (1940) M.L.J. 205.
(2) *St. Helen's Colliery v. Hewitson* (1924) A.C. 59.
(3) *Weaver v. Tredegar Iron and Coal Co. Ltd.* (1940) A.C. 955.
(4) *John Stewart & Son Ltd. v. Longhurst,* (1917) A.C. 249.
(5) *Foster v Edwin Penfold & Co. Ltd.* E. & E. D. Suppl. (1938) Vol. 34, p. 36.
(6) *Burma Oil Co. v. Ma Hmwe Yin & anor.* A.I.R. 1935 Rang. 428.
(7) *Benson v. Lancashire and Yorkshire Railway Co.* (1904) 1 K.B. 242.
(8) *Alderman v. Great Western Railway* (1937) A.C. 454.
(9) *Newton v. Guest, Kein & Nettlesfolds Ltd.* (1926) W.C. & I.R.
(10) *Northumbrian Shipping Co. v. McCullum* (1932), 101 L.J. (K.B.) 664; 146 L.T. 124.
(11) *Dennis v. White* (1917) A.C. 479.
(12) *Katherine Austin's Case* 86 E.R. 128.
(13) *Howells v. Great Western Railway* (1928) 97, L.J.R. 183.

CIVIL APPEAL.

R. H. V. Rintoul for the appellants.

C. V. Boyle, (D. P. P.) for Deputy Commissioner for Labour.

Callow J.: — This is an appeal against the decision of the Commissioner for Workmen's Compensation, Negri Sembilan, delivered at Seremban on the 25th of May, 1948, in an application in accordance with section 20(i) of the Workmen's Compensation Enactment pursuant upon section 23 of the said Enactment, and made by rule 19 of the Workmen's Compensation Rules, 1933, consequent upon the death on the 11th of December, 1947, of Ramagoundan, a workman employed on the New Labu Estate.

The grounds of appeal are as follows:—

1. The Learned Commissioner erred in Law in holding that Mr. R. N. Broome who in fact made the Application in question had power to initiate the Proceedings in default of his appointment as NEXT FRIEND of the Minor Dependants pursuant to Rule 42 of the Workmen's Compensation Rules.

2. The Learned Commissioner erred in Law in holding that the death of RAMAGOUNDAN late of New Labu Estate was caused by injury to the said Ramagoundan arising out of and in the course of his employment as a workman employed by the Appellants.

3. The Learned Commissioner erred in Law in holding that the journey which the said Ramagoundan was undertaking at the time the Accident alleged by the Applicants took place was a journey in the course of the Deceased's employment.

4. The Learned Commissioner erred in Law in holding that the Deceased, who was under no obligation to attend at the New Labu Estate Factory on the 11th day of December, 1947 was at the time of the accident aforesaid travelling on his Master's business."

It will be convenient to deal first with ground 1. The point was raised at the commencement of the proceedings in the Court below, and the learned Commissioner ruled against the appellants, including in his grounds for judgment the reasons therefor.

It is manifest that the orphan applicants may by virtue of section 23(iii) and section 25(i)(f) of the Workmen's Compensation Enactment be represented by the Controller, which designation includes the Deputy Commissioner for Labour, but the submission by Mr. Rintoul for the appellants is that without the added sanction of the Commissioner (rule 42) the position of the Deputy Commissioner for Labour is analogous to that of a legal representative, and insufficient for identification with the applicants.

Mr. Rintoul argued that under such procedure any decision by the learned Commissioner would not be binding, and he feared the embarrassment of further action by unscrupulous relatives of the orphan applicants. Comparison was made with sections 34 and 417 of the Civil Procedure Code.

Mr. Boyle, who appeared for the respondents, replied that rule 42 of the Workmen's Compensation Rules, 1933, simply empower the Commissioner to direct representation of a minor should it be necessary. Reliance was placed on *Alkaff's*[1] *case,* and it is necessary to consider closely this report. The argument in *Alkaff's*[1] *case* (at p. 209) was that:—

"The Assistant Controller of Labour had no *locus standi* because he had no principal with a *prima facie* claim, was acting without any instructions from such principal and that there was no proof of the existence any dependant or any dependency".

It is further stated at page 206 of the reported case that "A perusal of the previous correspondence shows conclusively that no question had ever arisen between the parties, and that no attempt was ever made to settle it by agreement".

In my view the position in this case is quite different and distinguishable. The representation of the minors (and in *Alkaff's*[1] *case* the applicant was the widow) by the Deputy Commissioner for Labour is challenged here only on the ground of non-fulfillment of rule 42 of the Workmen's Compensation Rules, 1933. There is no real attack as to the Deputy Commissioner for Labour's position of representation, and in paragraph 8 on page 3 of the Record it is shown that attempts to effect settlement have failed.

The sole complaint is non-compliance with rule 42 and the fear that finality might not be attained

It would not have been difficult for the respondents to have complied with rule 42; it was only for the learned Commissioner to himself make the appointment, and had it been done *ex abundanti cautela* this ground of appeal could not have arisen. But was it essential, and does it's absence vitiate the proceedings?

Mr. Boyle pointed out that had the word "may" in section 23(iii) of the Workmen's Compensation Enactment been the mandatory "shall", the need for rule 42 could hardly arise. This drafting provison or term, having been raised by a Crown Law Officer, will no doubt receive due attention when amendments of the Enactment are considered.

There was no doubt in the mind of the Court below that the orphan applicants were properly represented for all purposes by the Deputy Commissioner for Labour. Is this point taken by Mr. Rintoul merely academic?

In *Alkaff's*[1] *case* it was the jurisdiction of the Commissioner which was called into question (at p. 210). Here it is the status of the Deputy Commissioner for Labour. In my view the Court below having satisfied itself of the fulfillment of the conditions precedent to the action, i.e. the particulars filed under rule 19 of the Workmen's Compensation Rules 1933, vide page 3 of the Record, had no need to go further and formally authorise the appointment of the Deputy Commissioner for Labour to represent the minors. To quote Gordon Smith J. in *Alkaff's*[1] *case* (at p. 210):—

> So long as it is made clear that he is acting in such representative capacity and that the necessary particulars of the defendant are given.

This satisfied the learned Judge of Appeal in *Alkaff's*[1] *case*, and with respect I follow. Even if the omission to obtain the appointment in accordance with rule 42 was held to be a defect or irregularity it did not affect the merits of the case (Cap. 2, section 31), and I see no reason to uphold the appeal on ground 1.

Grounds 2, 3 and 4 may be considered together. In the facts found by the learned Commissioner (Record pages 13/14), apart from paragraphs 6 and 9, there is no dispute. At page 13 of the Record it is stated that Counsel for the respondents, the present appellants, did not dispute any of the facts, but in this Court, paragraphs 6 and 9 were attacked. The facts found are as follows:—

(1) The deceased was a daily employed labourer on the New Labu Estate with the average monthly wages of $57.30.

(2) His employers were the Sungei Salak Rubber Co. Ltd. who owned the Estate.

(3) His employment was that of a labourer in the Stores.

(4) He left two total dependants i.e. two children Ponnusamy (11 years) and Pappathy (f) (9 years).

(5) He met his death on 11 December 1947 between 1 p.m. and 1.30 p.m. as a result of injuries received when falling off a lorry belonging to the Respondents.

(6) The place of death was on a road leading from the labourers lines to the main Labu Road. The road itself at that point was State property although for the past 20 years the P.W.D. have not maintained it the duties of weeding and clearing it having been assumed by the Estate. The Road was taken over by the State to afford entrance to a quarry which was now and had been for some time in disuse.

(7) The deceased lived in quarters provided by the Respondents on the Estate for which he paid no rent but he was under no obligation to live there.

(8) The deceased had not express permission to travel on the lorry but he had no direct instructions forbidding him. The manager of the estate was aware that at times the labourers did travel to work on the lorry.

(9) On the 11 December 1947 the deceased attended muster in the labourers lines between 5.30 a.m. and 6 a.m. when he received his instructions for duties that day which were to come on the second shift at the Store which commenced at 3 p.m. From muster to 3 p.m. his time was his own.

(10) When the deceased boarded the lorry at 1 p.m. his purpose was to proceed to his place of work i.e. the Store.

(11) To go by the road to the Store was not the shortest way and when the labourers walked which they usually did they proceeded through the estate which meant they had only the main Labu Road to cross that being the only part of the route which was not estate property.

After finding those facts the learned Commissioner properly directed himself that the issue before him was whether the accident resulting in the death arose out of and in the course of the employment.

The general rule is settled. A man's employment does not begin until he has reached the place where he has to work, or the ambit, scope, or scene of his duty, and it does not continue after he has left it, and the periods of going and returning are generally excluded (*Willis's Workmen's Compensation*, 37th Edn., page 24).

In this case I see no reason to differ from the finding in paragraph (10) that the deceased boarded the lorry to proceed to his place of work. Counsel for appellants attacked paragraph (9) of the findings of fact, and argued that there was no evidence to prove that the deceased attended the morning muster and so received instructions for the *post meridiem* shift. From the evidence of Mr. Mills it is clear that all labour was required to attend the morning muster, when each person was assigned his work for the day. The muster is held at the factory which is by the main road, and the labourers' lines are some distance away in the Estate.

It is true that there is no direct evidence of the presence of the deceased at the muster, although there cannot be the slightest doubt that he did attend and was detailed for the afternoon shift. The hearing in

the Court below obviously proceeded on that assumption, and there is no suggestion in the record of any *desideratum* on this point. Had the deceased not been on the muster, and not been detailed to work on the second (afternoon) shift, then paragraph (10) of the findings of fact which are unchallenged would not have been reached, for the learned Commissioner could not well have found the deceased boarded the lorry to proceed to his place of work. I see no reason to support the appeal on this point; I am satisfied that the Court below had sufficient evidence before it to find that the deceased was required to start work at the factory at 3 p.m., and at the time of his death he was on the way to his work. It is true that if the workman fails to attend and start work he will forfeit pay, but on the morning muster he by conduct accepts the offer of employment on the second shift. If otherwise the management is in an impossible position; if it is merely an invitation to report for work, than how could the factory carry on? Perchance no worker might accept this overture. I do not find sufficient grounds to justify this Court upsetting paragraph (9) of the facts found.

Now being satisfied that the deceased was going to work I have to consider whether at the time of death an exception to the general rule has been shown sufficient to entitle compensation.

Mr. Boyle's main reliance is that the case can be held to be within the exception set out on page 27 of the 37th edition of *Willis's Workmen's Compensation*. This reads :—

"Provision of Transport. — The period of employment will include the time taken by a workman in getting to and from his work by means of transport provided by his employer when the workman is using the means of transport in discharge of some contractual duty owed to his employer, either by reason of express or implied directions given by the employer, or by reason of his being at the time subject to the control of his employer, or by reason of some proved necessity to use the provided means of transport as being the only means for passing to and from his place of work."

Now it is established that the deceased boarded the employer's lorry at the labourer's lines, and that this means of conveyance to work had the non-disapproval of the employer. I do not put it higher than that. The deceased could have taken a shorter route on foot, but if there is a lorry proceeding to the factory (evidence of Sangodam at page 8 of the record) then the opportunity of conveyance is seized. There is evidence that the weather was bad, so no doubt the occasion of transport was welcome.

I am satisfied that the deceased boarded this lorry, which travelled the route and carried the workman with the knowledge of the employer, to discharge a contractual duty to work on the afternoon shift by reason of the assignment made earlier in the day. I think that at all times during the journey he was subject to the control of his employer, who could have stopped the lorry and directed him to proceed to the factory by other means should it have been necessary.

Mr. Rintoul placed considerable reliance on the case of *St. Helen's Colliery v. Hewitson*[2]. That case is distinguishable from the case of *Weaver v. Tredegar Iron and Coal Co., Ltd.*[3], and I think from this case, inasmuch as in *Hewitson's*[2] *case* the workman met with his injuries some miles away from the place he worked and while in a train provided by the employer for use by employees on condition of non-liability for accident.

The cases of the type of *John Stewart & Son Ltd. v. Longhurst*[4] and *Foster v. Edwin Penfold & Co. Ltd.*[5] illustrate the principle that the workman was at the scene of the accident only by virtue of his employment, in same way as the deceased Ramagoundam was in the lorry only and solely for the purpose of going to his work.

Mr. Rintoul rightly conceded that the case of *Burma Oil Co v. Ma Hmwe Yin & anor.*[6] was not binding on this Court, but it is convenient to distinguish it from the appeal now before this Court. In that case the workman lost his life through a snake bite while en route to work, and the claim for compensation failed. The snake had nothing to do with employer or the employment. Here the deceased was *in the employer's lorry* at the time of the fatality, where he actually was in the lorry seems to have been queried, and there is the suggestion at the top of page 8 of the record that he was standing on the running board.

It is with reference to the case of the *Burma Oil Co.*[6] that the question of the hour was raised. The accident occurred about 1.30 p.m., and the deceased was not due to commence work until 3 p.m. In the *Burma Oil Co.*[6] *case* the injured party went early to work and took the route he did for the sake of a friend's company; in this case the deceased travelled in his employer's lorry on account of the weather. I do not find the time material. It is notorious that exactness of time is often disregarded; the deceased had the opportunity of a ride instead of a walk, and he took the former.

Another case cited on behalf of the appellants was *Benson v. Lancashire and Yorkshire Railway Co.*[7], but in that case the employee departed for his own purposes from his route to work. Once the ordinary route is left, and a more dangerous one followed for the employee's own convenience, then a claim for compensation rightly fails. In this case Ramagoundam lost his life travelling in his employer's lorry, nor was it unusual for workmen to be so conveyed. The lorry followed the only route from the labourers' lines to the place of work at the factory.

In *Alderman v. Great Western Railway*[8] the applicant was a travelling ticket collector in the employ of the respondent Railway Company. His duties required him on occasions to be away from his home over-night, and to stay in lodgings. One morning he met with an accident while proceeding to work from his lodgings. This again I distinguish from the case now under consideration. It is true that ticket collector Alderman was required to notify the Railway Company of his address, and to some extent his choice of lodgings was limited in area in order to provide convenient access for communication in case of need; but when he slipped and sprained his ankle in a public street he was subject to no control by the employer Railway Company, and he was in the same position as any other member of the public proceeding along a thoroughfare.

The case of *Newton v. Guest, Kein and Nettlefolds Ltd.*[9] seemed to favour more substantially the appellants' argument. The facts therein are analogous with those in this appeal, except that the workman was injured while going towards the transport (a railway train) provided by the employer for the optional use and convenience of employees. I think that if Ramagoundam had lost his life while proceeding to, and before boarding the lorry, then this case of *Newton's*[9] would have received the closest attention of the learned Commissioner in reaching his decision in the Court below; I do not think it was cited there, but the essential difference is that in this case the fatality resulted while the deceased was travelling in the employer's motor vehicle, not while he was approaching and before entry.

In the case of the *Northumbrian Shipping Co. v. McCullum*[10] Lord Macmillan said :—

> It has been recognised time and again that the sphere of a workman's employment is not necessarily limited to the actual place where he does his work. If in going to or coming from his work he has to use an access which is part of his employer's premises, or which he is only entitled to traverse because he is going to or coming from his work, he is held to be on his master's business while he is using that access.

The case of *Weaver v. Tredegar Iron and Coal Co., Ltd.*[3] contains much applicable law, and distinguishes many of the cases cited by learned Counsel for the appellants. In my view the deceased was definitely in the performance of something on behalf of his employer, he was on his way to his place of work for the purpose of working (*Weaver's*[3] *case,* cited *supra* at page 980). He would not have been at the place where he met his death had it not been for his status as an employee. It arose out of and was incidental to the employment.

But the point that has caused me the closest consideration is that raised by Mr. Rintoul in his able and interesting argument which I am fortunate in having verbatim from the stenographer's note. It concerns the piece of road on which the accident occurred. In *Weaver's*[3] *case* (cited *supra* page 983) Lord Romer states :—

> My Lords, in view of these cases it must, in my opinion, be taken to have been settled by the authority of this House that, after a workman has finished his day's work and starts out on his way home, his employment continues while he is traversing the premises on which he has been working and any private means of access thereto which he is only entitled to use by reason of his status as a workman, but that, unless engaged on some special errand for his employer, which necessitates his being there, his employment ceases when he reaches a place to which the public have a right of access such as the public street. From that moment he loses his identity as a workman and becomes one of the general public. A similar principle, of course, applies to a workman on his way to his work.

Now although the workmen used this estate lorry as a means of access to work, such transportation was optional. Does the site of the accident affect the issue? Mr. Rintoul has referred to numerous cases in support of his argument that despite other conditions if the accident occurred on a public highway under such circumstances as to require the workman to accept and share risks common with the travelling public, then compensation cannot be awarded.

By consent I visited the scene. The lane leaves the highway and the place of the accident is some 400 yards inside the estate. On the day in question the lorry had started from the labourers' lines and on reaching the main road would have turned right and proceeded thence for some little distance until the factory was reached.

It is clear from the record that at one time the Public Works Department took over the lane in order to reach a quarry (paragraph 6 of facts found, page 13 of record). When this was I do not know, but Mr. Mills said (record page 10) that it was 20 years ago since the Public Works Department last attended to the road. The quarry has evidently been out of use for many years. It was never fenced.

Either before or after this time the Estate connected a road from the labourers' lines to meet the quarry lane, and so run on to join the main road. The road is now indistinguishable from any other estate road except perhaps it is not quite as well kept as some; it is a single wheel track partly grass grown in the centre.

The learned Commissioner in his grounds for judgment used the term "public road" (record page 16), and found that the accident occurred on a public

road, but he relied on the case of *Dennis v. White*[11]. I do not think he can. In that case the workman was ordered by his employer to go on a bicycle to fetch something, and in his journey he met with an accident. In this appeal the deceased was not obliged to travel in the lorry. I think the category of the road is important.

The road was used by the Public Works Department solely for quarrying. It happened to be taken over by a public department; such a road could have been constructed by any commercial firm wanting stone. Does the fact that it was taken over by the Public Works Department make it a public highway? Mr. Boyle describe it a quarry road. I have seen it, and do not think it could *now* be so described. It is a road leading from the highway to the New Labu Estate labourers' lines. It was never dedicated to public use.

I can find no authority, nor could Counsel assist me, on the categories of such lanes. I do not think there is any obligation on the part of Government to maintain such a road, on the other hand if it was once a public highway it must always so remain, it cannot lose it's status to the Estate by any prescriptive right of user by the latter.

I have had to go back to the times of King Charles II in the endeavour to answer the conundrum. In *Katherine Austin's*[12] *Case* it states :—

> Upon a trial at Bar, the principal question was, whether the place where the obstruction was, were an highway?
>
> Hale said, If a way lead to a market, and were a way for all travellers, and did communicate with a great road, &c. it is an highway; but if it lead only to a church, to a private house or village, or to fields, there it is a private way. But 'tis a matter of fact, and much depends upon common reputation. If it be a public way of common right, the parish is to repair it, unless a particular person be obliged by prescription or custom. Private ways are to be repaired by the village or hamlet, or sometimes by a particular person.

It seems to me that the road cannot be regarded as a public road. No one on viewing it would so describe it. It's present utilised purpose is to proceed to and from the main road and the Estate labourers' lines. The Estate maintain it (record page 10) and only those working on or having business with the Estate pass along it.

I cannot accede to the principle that a road in Malaya because it is on State property must *ipso facto* be a public road. Many roads leading to places of public utilities or services pass over State land, but could not be held to be public roads or highways for all to use. Some, indisputably on State land, lead to official residences, others to public institutions; they are not highways. I do not believe the public had ever a right of way over this lane, using the term "public right of way" in the generally accepted construction. For all practical purposes the lane on which the accident occurred was an estate road running as it does through the employer's plantation. Had there not been the point of the status of the road on which the accident happened, then I think the case of *Howells v. Great Western Railway*[13] affords full authorities in support of the finding of the Court below, and in my view it would be wrong to hold against the principles therein enunciated because only of the question of this road claimed by the appellants to have the standing of a public highway. I cannot regard it as such.

Therefore, though not quite by the same route, I arrive at the same conclusion as the learned Commissioner in the Court below.

The appeal is dismissed with costs in favour of the applicant-respondents.

Appeal dismissed.

LIM AH TONG v. PUBLIC PROSECUTOR.

[C. A. (Spenser Wilkinson, Russell, and Briggs JJ.) November 20, 1948]

[K. L. — F.M. Criminal Appeal No. 133 of 1948]

Criminal law — Possession of arms — Carrying arms — Onus of proof that firearm is unlicensed — Defence of duress — Penal Code, s. 94 — Evidence Enactment, s. 106(b) — Emergency Regulations, 1948, reg. 4(1)(a).

This was an appeal against the conviction of the appellant for being in possession of a revolver an offence punishable under reg. 4(1)(a) of the Emergency Regulations. The evidence showed that the accused was carrying the revolver.

Held: (1) it is desirable where the offence is clearly one of carrying arms, to charge it as such, as both the evidence required to prove the offence of carrying arms and the law relating thereto are simpler than in a case of carrying arms, and therefore to charge a person who has carried arms with possession of them unnecessarily increases the difficulties of the Assessors and the trial Judge in trying a capital charge; (2) all the general exceptions set out in Chapter IV of the Penal Code apply to offences under the Emergency Regulations and that the learned trial Judge was therefore wrong in saying in his summing up that section 94 of the Penal Code which defines the defence of duress does not apply to an offence under the Emergency Regulations; (3) in a charge dealing with unlicensed firearms the duty of the prosecution is to give *prima facie* evidence that the firearm in the possession of the accused is unlicensed and it is then for the accused to show if this be the fact, that he is licensed.

Case referred to :—

(1) *R. v. Oliver* 29 Cr. App. R. 137.